

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

REGINALD BUCKLEY,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 00-121-B-C
	)	
ALFRED CICHON, P.A.,	)	
KENNETH GALLANT, M.D.,	)	
LT. R. CLUKEY, and	)	
CAPTAIN CHERYL GALLANT,	)	
	)	
Defendants	)	

**RECOMMEND DECISION**

Plaintiff, Reginald Buckley, a former inmate of the Penobscot County Jail, has sued two officials at the jail and two medical providers employed by Allied Resources for Correctional Health, alleging that he was denied prescription medications in violation of his constitutional rights. Defendant Kenneth Gallant, one of the medical providers, has never been served with process. Defendant Alfred Cichon, the other Allied Resources employee, has moved for dismissal of this action. Plaintiff has not responded to the motion to dismiss. (Docket No. 16.) I now recommend that the Court **GRANT** Cichon's motion and I further recommend that the Court order that the complaint be **DISMISSED** as to the remaining three defendants for the reasons stated herein.

**Legal Standard**

In analyzing this motion to dismiss, Buckley's allegations are accepted as true, and all reasonable inferences are drawn in his favor. *See Aybar v. Crispin-Reyes*, 118 F.3d 10, 13 (1<sup>st</sup> Cir. 1997). I need not, however, give credence to Buckley's "bald

assertions” or “unsubstantiated conclusions.” *Correa-Martinez v. Arrillaga-Belendez*, 903 F.2d 49, 52 (1<sup>st</sup> Cir. 1990). At this threshold stage I do review Buckley’s *pro se* complaint according to a “less stringent” standard than I would apply to a lawyer-drafted complaint. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

The governmental employees named in this complaint are entitled to have the complaint against them dismissed if it fails to state a claim upon which relief may be granted pursuant to the provisions of 28 U.S.C. § 1915A(b)(1) even in the absence of a motion to dismiss because Buckley is a prisoner and his complaint is subject to the screening requirements of 28 U.S.C. § 1915A(a) and (b).

### **Discussion**

#### *1. Defendant Kenneth Gallant*

Kenneth Gallant is apparently a medical doctor who was previously employed by Allied Resources for Correctional Health. Buckley’s complaint does not contain any allegations whatsoever concerning Gallant other than his name and place of employment. The complaint fundamentally fails to state a claim as to Gallant.

Furthermore, Gallant has never been served with a copy of the complaint. The record reflects that on October 10, 2000, the clerk issued an Order to Show Cause because 120 days had elapsed from the filing of the complaint and no returns of service had been filed. Buckley responded by indicating that he had sent copies of the complaints to the defendants and they had never responded to his requests for waivers of service. I treated his response as a request for service by the U.S. Marshal and authorized the same. Three of the four defendants were served, but the Marshal’s return, filed on October 31, 2000, indicated that “Doctor Gallant no longer works for A.R.C.H. no

forwarding address or information.” Buckley has never provided the court with an indication of how he intends to proceed regarding Defendant Gallant. That failure, coupled with the complete failure to state a claim against Gallant, warrants dismissal of the action as to Kenneth Gallant.

## *2. Defendant Alfred Cichon*

Alfred Cichon is a physician assistant employed by Allied Resources. According to the allegations of Buckley’s complaint, Cichon was responsible for providing Buckley’s medical care and treatment. Buckley’s primary complaint regarding Cichon is that he would not provide a particular pain medication which Buckley felt he needed. Buckley suffers from a number of debilitating conditions and is in constant pain. Cichon prescribed various medications for him, none of which were satisfactory to Buckley. Buckley asserts in conclusory fashion that Cichon was indifferent to his pain, but does not provide any supporting facts.

On December 27, 2000, defendant Cichon filed a motion to dismiss arguing, *inter alia*, that the complaint does not claim that Cichon failed or refused to provide treatment, only that he failed to provide the treatment requested. Cichon argues that there are no facts asserted that would support a claim of deliberate indifference. Buckley’s claim rises to the level of a constitutional violation only if Cichon exhibited “‘deliberate indifference to serious medical needs.’” *Watson v. Caton*, 984 F.2d 537, 540 (1st Cir. 1993) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). “The courts have consistently refused to create constitutional claims out of disagreements between prisoners and doctors about the proper course of a prisoner’s medical treatment, or to conclude that simple medical malpractice rises to the level of cruel and unusual punishment.” *Id.*

While Buckley's complaint describes complications arising from a serious medical condition, diabetes, he does not allege any facts that would suggest that Cichon's "medical judgment was absurd or that improper reasons were given for refusing treatment." *Id.* The court is left with a dispute between a prisoner and a physician assistant about the type of treatment rendered. That dispute does rise to the level of a constitutional violation. Cichon is entitled to dismissal of the complaint.

### *3. Defendants Richard Clukey and Cheryl Gallant*

These Defendants have been served and have filed an answer, but have not yet filed a motion to dismiss. Nevertheless, pursuant to 28 U.S.C. § 1915A I may recommend dismissal of a complaint if the complaint fails to state a claim upon which relief may be granted. Cheryl Gallant, other than being identified as a captain at the Penobscot County Jail, is not mentioned in the complaint. It obviously states no claim as to her.

Richard Clukey is identified as a corrections officer who advised Buckley that if he was unhappy with the medical treatment received at the jail he could obtain a second opinion from an outside examiner. Buckley apparently took exception to this offer because Clukey informed him that the costs associated with any second opinion would be borne by Buckley. These allegations do not amount to "deliberate indifference to serious medical needs."

### **Conclusion**

Based upon the foregoing, I recommend that the Court **GRANT** Defendant Cichon's motion to dismiss and I further recommend that the Court order that the action be **DISMISSED** as to the other three defendants.

## NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

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Margaret J. Kravchuk  
U.S. Magistrate Judge

Dated this 25<sup>th</sup> day of January, 2001.

PR1983

U.S. District Court

District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 00-CV-121

BUCKLEY v. CICHON, et al

Filed: 06/13/00

Assigned to: JUDGE GENE CARTER

Demand: \$0,000

Nature of Suit: 550

Lead Docket: None

Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 42:1983 Prisoner Civil Rights

REGINALD BUCKLEY

REGINALD BUCKLEY

plaintiff

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